

REMARKS

Applicant would initially like to thank the Examiner for the helpful comments set forth in the Advisory Action dated September 17, 2008 in connection with the present application. In view of those comments, Applicant respectfully requests the Examiner to reconsider the present application taking into account the above amendments and following remarks:

1. Rejection of Claims Under Section 103:

Claims 20, 22, 25, 26, 32, 34, 36 and 37 stand rejected under Section 103 as being unpatentable over the article entitled "Burlington Outlet Opens At Commons Chain Fills Void Left By Kmart," by Ron Maxey, published March 13, 1997 (hereinafter "Maxey") in view of the Wall Street Journal article dated Dec. 4, 2000 entitled "Promotional Ties to Charitable Causes Help Stores Lure Customers" (hereinafter "Zimmerman"). In particular, the Examiner asserts that Maxey teaches a method of promoting sales of goods and/or services at a shopping complex, except that Maxey does not teach providing a physical microenvironment. The Examiner nevertheless asserts that Zimmerman teaches that aspect including a physical microenvironment along 20 blocks of Madison Avenue in New York including stores such as Armani and Zitomer.

a. The Activities Provided By Applicant's Method Are Ongoing And Extend Substantially Through Multiple Seasons Of The Year, Whereas, Zimmerman's Discount Program Only Lasts For 9 Days Out Of The Year.

The Examiner asserts that the shopping card promotional program of Zimmerman is an "ongoing activity" lasting 9 days each year. Upon carefully reviewing and considering Zimmerman's method, however, it should be clear that there are distinct differences between Zimmerman's and Applicant's methods, as follows:

Zimmerman is directed to a promotional discount activity run by merchants and charities that offers discounts for a limited time to shoppers who donate money to charities. More specifically, Zimmerman relates to a temporary promotional program that gives incentives for shoppers to donate to the participating charities. The program runs as follows: During the 9 day period,

charities sell donation cards for a fixed price, wherein, when consumers buy the card, the money raised goes to the charities. But in return—during the 9 day period—the retailers give those consumers who bought the card specified discounts on goods and/or services that they sell.

In Zimmerman, the program only lasts 9 days out of the year and therefore is not part of the ongoing business of the retail merchants or shopping mall. In fact, Zimmerman even discussed the problems associated with the program which militates against making it an ongoing program. He states: "Some retailers find the programs frustrating because they are hard to plan for and the crowds can be overwhelming. . . . It's an imposition . . . Our sales go up so high, but our inventory is depleted. The chain has to bring in extra staff to handle the volume and it worries about becoming dependent on the programs for sales. . . ."

On the other hand, Applicant's method is intended to be part of the ongoing business and physical space of the shopping complex, and therefore, it should be clear that Applicant's method is substantially different from the 9 day discount program taught by Zimmerman.

Given the Examiner's comments in the Advisory Action, however, Applicant has replaced the previous claims with Claims 40-58 above, and, in connection with Claims 40-45, 51 and 53-58, has specified in part: "wherein said at least one activity is an ongoing activity or series of activities that extend substantially through multiple seasons of the year and is part of the normal ongoing activity of the shopping complex (emphasis added)."

Rather than running only 9 days out of the year, in Applicant's invention, the activities are intended to run through the year—through multiple seasons of the year—i.e., they are normal ongoing activities of the shopping complex. Clearly, Zimmerman does not suggest running his discount card program through multiple seasons of the year, and in fact, even suggests the opposite due to the difficulties that the program causes. Therefore, it should be clear that Applicant's invention as now specified in Claims 40-45, 51 and 53-58 is distinguishable over Zimmerman, and the combination of Zimmerman and Maxey.

b. Applicant's Invention Relates To A Method Of Encouraging Retail Tenants To Lease And Occupy Space At A Shopping Complex, Whereas, Zimmerman Does Not.

Another aspect of Applicant's method that distinguishes it over the prior art is that Applicant's method is intended to be used by a developer or owner of a shopping complex as a means of attracting prospective and desirable retail tenants to occupy and lease space at the shopping complex. That is, Applicant's method relates to what a developer, owner or operator could do initially to encourage and attract the right kind of tenants to occupy and lease space at the shopping complex, which can help ensure that the right kind of retail merchants, and therefore, the right kind of shopping environment, can be provided.

The following excerpt from Applicant's specification describes how a developer/owner might use the present method:

"The development of a shopping mall typically involves a complex series of events that must be coordinated for the development to be successful. . . .

In the beginning, there must be a vision marketing studies are often performed to determine the best location, as well as what kinds of retail establishments should occupy space at the mall. These decisions are often based on geographical and demographical marketing information about the kinds of communities that will eventually be located near the mall, as well as the economic statuses of the consumers who will eventually shop there. Various studies relating to the economic conditions and wealth statuses of the area, including future prospects for employment and growth, are likely to be conducted

Another issue that mall developers have to deal with involves selecting the right retail merchants that are going to occupy and lease space at the mall. This process can be complicated by the fact that negotiations often have to be entered into with respect to each prospective tenant, and each one presumably has its own interests and concerns that must be considered and discussed. Some prospective tenants may be essential to the mall, such as large department stores, which may be the focus of the initial development efforts. For example, in any given mall, the fact that Nordstrom, Macy's, Saks Fifth Avenue, etc., might agree to occupy space at the mall could change the entire complexion of the development, both from the standpoint of the size and scope of construction, as well as who the other tenants will be. As is often the case, a decision by one tenant may

end up being the reason that another tenant might agree to occupy space there . . .

Within this context, mall developers have a number of important options and decisions to make concerning the development of the mall The present invention contemplates that mall developers will be able to attract prospective and desirable retail tenants by providing a microenvironment within the mall specifically designed to provide activities and entertainment that will help promote sales of the particular goods and services being offered for sale by the participating retail merchants. They are also designed to be entertaining and enjoyable to consumers so as to attract customers to the mall and to the stores" (emphasis added)." See page 6, line 7, through page 8, line 16.

Clearly, Applicant's method relates to a process that in many cases begins while the shopping complex is being planned, organized and developed, unlike Zimmerman, which relates to a temporary promotional program organized by charities and retail merchants well after the shopping area, if any, is completed.

In this respect, it should be clear that Zimmerman has nothing to do with the development of a shopping complex, nor with how a developer or operator of a shopping complex under common ownership encourages and attracts retail tenants to occupy and lease space at the complex, as in the case of Applicant's method. Contrary to what the Examiner asserts, Zimmerman does not teach or suggest a method of encouraging retail merchants to occupy and lease space at a shopping complex – the mere fact that there are retail spaces along 20 blocks of Madison Avenue in New York does not imply that the discount card program is being used to attract the merchants there, since the retail merchants are presumably there already – along Madison Avenue.

For these reasons, it should be clear that new Claims 40-58 which are directed to "a method of encouraging retail tenants to occupy and lease space within a shopping complex . . ." is distinguishable over Zimmerman.

c. The AP Article Does Not Relate To A Method Of Encouraging Retail Tenants To Lease And Occupy Space At A Shopping Complex; Nor Does It Relate to Activities That Are Ongoing And Extend Substantially Through Multiple Seasons Of The Year.

Claims 21, 23, 24, 33 and 35 stand rejected under Section 103 as being unpatentable over Maxey in view of Zimmerman and further in view of the article entitled "Retailers gear up for big party: Businesses try quirky promotions during convention." (hereinafter "AP Article"). In particular, the Examiner asserts that while Maxey and Zimmerman do not disclose all of the features set forth in the claims, the AP Article does teach or suggest those features.

The AP Article simply discusses having a party to generate sales at the location where the party is being held—a convention. That is, it relates to retailers that have decided to take advantage of the publicity and promotional value attributed to having a major presidential convention held in their city, and using the party as a means of promoting the goods and services that they sell.

In this respect, the AP Article has nothing to do with encouraging retail tenants to occupy and lease space at a shopping complex. Instead, the AP Article simply relates to a party put on by existing merchants and retailers to promote the sale of goods and/or services that they sell during a convention. It has nothing to do with the development of a shopping complex, nor with how a developer or operator might encourage and attract retail tenants to occupy and lease space there, as in the case of Applicant's method.

The AP Article also does not teach or suggest an ongoing activity that is part of the normal ongoing activity of a shopping complex. In the case of the AP Article, the retailers and merchants that are participating in the party are only involved in the activities during the presidential convention, which typically only lasts for a few days once every four years.

For these reasons, it should be clear that Applicant's invention as specified herein is distinguishable over the combination of Maxey, Zimmerman and the AP Article.


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2. Conclusion:

For all of the foregoing reasons, Applicant respectfully submits that the application is in condition for allowance, and earnestly requests the Examiner to enter a notice of allowance in this case.

Very Truly Yours,



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